

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BOBBY FRANCIS LOWRY V,

Plaintiff,

vs.

No. CIV 19-216 MV/GJF

NEW MEXICO DEPARTMENT OF
CORRECTIONS, KRISTINA CORDELL,
and ROBERTA COHEN,

Defendants.

**ORDER ADOPTING MAGISTRATE JUDGE'S
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

THIS MATTER is before the Court on Plaintiff's Application for Preliminary Injunction ("Motion") [Doc. 3] and United States Magistrate Judge Gregory J. Fouratt's Proposed Findings and Recommended Disposition ("PFRD") [Doc. 32].

The PFRD recommended that the Court deny Plaintiff's Motion. PFRD at 12-15. The PFRD also recommended that the Court renew its previous orders for Plaintiff to (1) make monthly payments towards the \$350 filing fee and (2) advise the Court of any changes to his mailing address. *Id.* at 15-16. Finally, the PFRD notified the parties of their ability to file objections within fourteen days and warned them that the failure to file objections would waive appellate review. *Id.* at 16. The fourteen-day deadline has now expired without either party filing objections and the Court has waited additional time to accommodate any extra delay that could be associated with Plaintiff's incarcerated status.

The Tenth Circuit has held that "a party's objections to the magistrate judge's report and recommendation must be both timely and specific to preserve an issue for de novo review by the district court or for appellate review." *United States v. One Parcel of Real Property*, 73 F.3d 1057,

1060 (10th Cir. 1996). The parties' failure to timely object to the Magistrate Judge's Proposed Findings and Recommended Disposition waives appellate review of both factual and legal questions. *In re Key Energy Res. Inc.*, 230 F.3d 1197, 1199–1200 (10th Cir. 2000); *One Parcel of Real Property*, 73 F.3d at 1059. Furthermore, having reviewed the record and the briefing on the Motion, the Court concurs with the findings, analysis, and conclusions in the PFRD.


IT IS THEREFORE ORDERED that:

- (1) The PFRD (Doc. 32) is **ADOPTED**;
- (2) Plaintiff's Motion (Doc. 3) is **DENIED**;
- (3) Plaintiff shall make monthly payments towards the \$350 filing fee by
 - a. filing a *monthly* financial certificate *each month*, even if Plaintiff does not intend to submit a payment that month;
 - b. making monthly payments of twenty percent of Plaintiff's preceding month's income credited to his account, if the amount in the account exceeds \$10;
 - c. making such monthly payments until the \$350 filing fee is paid; and
 - d. showing cause in writing *each month* as to why Plaintiff should be excused for *that month* from making a partial payment—but only if (i) the amount in the account exceeds \$10 and (ii) Plaintiff does not intend to submit a payment that month; and
- (4) Plaintiff shall keep the Court advised of any changes in Plaintiff's mailing address.

PLAINTIFF IS AGAIN WARNED that:

- (1) his "failure to comply with [the order to make monthly payments] may result in DISMISSAL of the complaint *without further notice*," Doc. 5 at 1-2 (emphasis in original); and

(2) his “[f]ailure to keep the Court informed of [his] correct address may also result in dismissal of the case or other sanctions,” Doc. 6 at 1 (citing D.N.M. LR-Civ. 83.6).



HONORABLE MARTHA VÁZQUEZ
UNITED STATES DISTRICT JUDGE